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Man seeks to overturn jail-rape case

MISSOULA (AP) — A Missoula man convicted of raping a fellow inmate at the Missoula County Juvenile Detention Facility eight years ago is seeking to have the conviction overturned, saying the alleged victim now is recanting his testimony.

Cody Marble, 26, was convicted in November 2002 of raping a 13-year-old boy. He was sentenced to 20 years in prison and was paroled this summer.

Marble filed a petition Tuesday asking the District Court to hold a hearing on the new evidence and either overturn the conviction or hold a new trial based on information gathered by the Montana Innocence Project.

"I just want my life back," Marble said. "I want my life back from parole, from sex-offender registration, from this accusation."

The Innocence Project, a Missoula-based group that investigates possible wrongful convictions, got involved in Marble's case about 18 months ago.

"Our investigation yielded information that supports his innocence and raised more questions, and we turned that over (to Marble's attorney)," said Jessie McQuillan, the project's executive director. "The centerpiece of the petition is that the alleged victim has recanted. He says what many people suspected: That the rape never took place."

Innocence Project staffers and lawyers learned that the alleged victim was ready to recant his trial testimony, and they visited him at the Montana State Prison in Deer Lodge about 11 months ago, McQuillan said.

"He told us it was time to recant and we got the signed statement in July, at a subsequent visit with him," she said.

Missoula County Attorney Fred Van Valkenburg said he had only seen the petition briefly Tuesday, but it's surprising for a victim to recant eight years later.

"It's just one more thing that Cody Marble is trying to do to avoid responsibility for this case," Van Valkenburg said. "We're just going to have to deal with it."

The petition filed Tuesday includes a statement from the alleged victim, saying he plotted with others at the detention center to make up the story.

"I testified falsely against Cody Marble at the trial," he said in the statement. "I thought by then that the story had gone too far and I could not go back. I never thought he would be found guilty or go to prison. My hope now is to set the record straight."

The alleged victim is an inmate at the Montana State Prison, serving time for having sex with an underage girl. He couldn't be reached for comment.

Marble's petition also includes statements from two Missoula sex-offender counselors who have examined or treated Marble since his conviction and have questioned his guilt. They say the recantation from the alleged victim rings true.

Another inmate at the juvenile-detention facility when Marble and the alleged victim were there also filed a statement saying a "culture of setups" existed in the center in 2002, and that Marble had repeatedly been mentioned as a possible victim of a sexual-assault setup.

Those plotting the setup said they thought it somehow would get them in the good graces of prosecutors and help them get shorter sentences or reduced charges. The prisoner was not identified in the petition and asked that his full statement be sealed from public view.

Marble had been in and out of juvenile facilities on various drug charges as a teenager, but had never been convicted of a violent crime or felony before the rape charge.

Marble has filed at least a half-dozen petitions to appeal or overturn his conviction, but so far every one has been rejected by state or federal courts.